

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

IN RE: INTRAMTA SWITCHED ACCESS §  
CHARGES LITIGATION §  
§ Civil Action No. 3:14-MD-2587-D  
§ (MDL No. 2587)  
§  
§  
THIS DOCUMENT RELATES TO §  
ALL CASES §

**ORDER**

On February 25, 2015 lead and liaison counsel for defendants submitted a notice of filing proposed order on appointments and a proposed order. The court has added line numbers to the proposed order to facilitate submitting objections and has attached this version as an exhibit to this order.

Any plaintiff or defendant in a case that is part of this litigation who objects to any part of the proposed order must submit the objection no later than March 4, 2015. Any such objection must be filed in the Master Docket in this litigation, Civil Action No. 3:14-MD-2587-D. If a timely objection is submitted, the court will permit lead and liaison counsel for defendants to submit a response before entering the order.

**SO ORDERED.**

February 26, 2015.

  
SIDNEY A. FITZWATER  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

THIS DOCUMENT RELATES TO  
ALL CASES

**ORDER APPOINTING DEFENDANTS'  
LEAD / LIAISON COUNSEL AND STEERING COMMITTEES**

17 On February 13, 2015, pursuant to the Court’s Case Management and Scheduling Order  
18 No. 1 (Docket No. 12) (“CMO No. 1”), Defendants notified the Court that they recommended  
19 the appointment of two Steering Committees – one for large and medium-sized local exchange  
20 carriers (“LECs”), and the second for small, regional, and rural LECs (collectively the “Steering  
21 Committees”). (Docket No. 67.) Thirteen law firms submitted individual applications detailing  
22 their qualifications and willingness to serve as members of the Steering Committees. (Docket  
23 Nos. 47, 48, 50, 52, 53, 56, 57, 58, 59, 61, 62, 64, 65.)

24 Also on February 13, 2015, Cooley LLP (“Cooley”), counsel for 77 CenturyLink  
25 affiliates (collectively “CenturyLink”), filed an application to be appointed Lead / Liaison  
26 Counsel for Defendants and a member of the Steering Committee for Large/Medium LECs.  
27 (Docket No. 65.) No other applications for Lead or Liaison Counsel for Defendants were filed,  
28 and no objections were raised to Cooley’s appointment to these roles. *Id.* at 2 & 18.

29 At the Initial Scheduling Conference on February 18, 2015, no objections were raised to  
30 these applications.

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31 Having considered the submissions by counsel, the preferences voiced at the Initial  
32 Scheduling Conference, and the criteria set forth in Section III of CMO No. 1, the *Manual for*  
33 *Complex Litigation*, and Federal Rule of Civil Procedure 23(g), the Court hereby appoints the  
34 below leadership structure for Defendants. The Court has reviewed the applications counsel  
35 submitted and finds that all of the lawyers applying for leadership positions have satisfactory  
36 credentials and experience to serve in leadership roles in the litigation.

37 **I. LEAD AND LIAISON COUNSEL**

38 **A. Appointment**

39 The Court hereby appoints as Lead and Liaison Counsel for Defendants (“Lead  
40 Counsel”):

41 Douglas P. Lobel  
42 David A. Vogel  
43 COOLEY LLP  
44 One Freedom Square | Reston Town Center  
45 11951 Freedom Drive  
46 Reston, VA 20190

47 in coordination with their local counsel, Michael P. Lynn and Christopher J. Akin of Lynn  
48 Tillotson Pinker & Cox, L.L.P.

50 **B. Responsibilities**

51 All Defendants retain the right to choose to act individually in their best interests in these  
52 proceedings. However, the large number of counsel and Defendants requires a substantial  
53 amount of coordination of litigation efforts. Therefore, in consultation with the Steering  
54 Committees, Lead Counsel shall be responsible for coordinating the pretrial activities of  
55 Defendants in this litigation. To that end, but nonetheless subject to each Defendant’s retention  
56 of the right to choose to act independently in its best interests in these proceedings and each  
57 Defendant’s rights under Section IV.1 below, Lead Counsel shall have the following authority

58 and responsibilities, and may undertake these actions in its professional discretion, to the extent  
59 the Court permits any of these pretrial activities in this proceeding:

60 1. Solicit the views and positions of Defendants through communications with the  
61 Steering Committees and, where appropriate, counsel for individual Defendants;

62 2. Coordinate and manage pretrial proceedings on behalf of all Defendants,  
63 including briefing and arguing motions personally or by designee, after consulting with Steering  
64 Committees and other Defendants' counsel, with the goals of (a) consolidating common  
65 arguments and claims where possible, but also (b) giving appropriate opportunity to differing  
66 positions among Defendants;

67 3. Prepare and circulate, or delegate the preparation to others, of written materials  
68 for joint submission by multiple or all Defendants, affording reasonable opportunity for review,  
69 comment, and approval or disapproval of the Steering Committees or, when appropriate, counsel  
70 for individual Defendants;

71 4. Sign joint and/or consolidated documents on behalf of multiple or all Defendants,  
72 when (a) Lead Counsel has given a reasonable opportunity for Defendants to object to the  
73 documents; (b) a matter is urgent and no opportunity for consultation with other Defendants is  
74 present; or, (c) a matter is administrative and Lead Counsel does not believe the substantive  
75 rights of any Defendant will be prejudiced;

76 5. After consultation with the Steering Committees, develop and propose to the  
77 Court schedules for pretrial matters, including motions, discovery, and other procedures that may  
78 arise;

79 6. Coordinate and manage discovery among all Defendants including, but not  
80 limited to, preparing joint discovery requests and responses where possible, preparing

81 coordinated schedules for written discovery, document production and review, depositions,  
82 subpoenas, and other manners of discovery;

83 7. Coordinate the schedules of fact and expert witness depositions and after  
84 consulting with the Steering Committees and other Defendants' counsel, determine the lead  
85 examiner(s) for each noticed deposition, where multiple Defendants have an interest in the  
86 deposition;

87 8. After consulting with the Steering Committees and other Defendants' counsel,  
88 coordinate depositions of Plaintiffs under Rule 30(b)(6), including coordinating and  
89 consolidating the list of topics for the depositions, the times and places of the depositions, and  
90 the lead examiner(s) for the depositions;

91 9. After consulting with the Steering Committees and other Defendants' counsel,  
92 coordinate the identification, retention and testimony of experts or consultants whose testimony  
93 will be relied upon by multiple Defendants;

94 10. After consulting with the Steering Committees and other Defendants' counsel and  
95 obtaining prior consent from counsel for any Defendant to be bound by a stipulation, enter into  
96 stipulations with Plaintiffs as necessary for the conduct of the litigation, including the requisite  
97 meet and confer for motions;

98 11. Communicate with the Court and other counsel on behalf of Defendants;

99 12. Coordinate, plan, and lead meetings with co-Defendants and/or either Steering  
100 Committee when, after consulting with the Steering Committees and other Defendants' counsel,  
101 Lead Counsel reasonably determines that (a) such meetings are appropriate, and (b) the time and  
102 manner of the meetings are convenient to a reasonable number of Defendants with an interest in  
103 the subjects of the meetings;

104           13.   Advise co-Defendants of developments and prepare and distribute periodic status  
105            reports;

106           14.   Maintain up-to-date lists of counsel;

107           15.   Keep complete files of materials in this multidistrict proceeding;

108           16.   Maintain, or arrange for the maintenance of, an electronic database of discovery  
109            materials;

110           17.   Consult with local counsel Lynn Tillotson Pinker & Cox, L.L.P as necessary  
111            concerning local practices and Court procedures; and

112           18.   Perform such other duties as may be incidental to the above duties or authorized  
113            by further order of the Court.

114   **II.   STEERING COMMITTEES**

115    **A.   Appointment**

116           The Court hereby appoints the following counsel (listed in alphabetical order) to the  
117           Large / Medium LEC Steering Committee (“Large LEC Committee” and each a “Member”):

118           Douglas P. Lobel  
119           David A. Vogel  
120           COOLEY LLP  
121           One Freedom Square | Reston Town Center  
122           11951 Freedom Drive  
123           Reston, VA 20190  
124  
125           Christopher W. Savage  
126           Adam S. Caldwell  
127           DAVIS WRIGHT TREMAINE LLP  
128           1919 Pennsylvania Avenue, NW, Suite 800  
129           Washington, DC 20006  
130  
131           Juliet A. Cox  
132           Eric S. Johnson  
133           KUTAK ROCK LLP  
134           Two Pershing Square

135 2300 Main Street, Suite 800  
136 Kansas City, MO 64108  
137

138 Matthew A. Brill  
139 John S. Cooper  
140 LATHAM & WATKINS LLP  
141 555 Eleventh Street, NW, Suite 1000  
142 Washington, DC 20004  
143

144 Christian F. Binnig  
145 Jeffrey M. Strauss  
146 MAYER BROWN LLP  
147 71 S. Wacker Drive  
148 Chicago, IL 60606  
149

150 Russell Blau  
151 MORGAN, LEWIS & BOCKIUS LLP  
152 2020 K Street, NW  
153 Washington, DC 20006

154 The Court hereby appoints the following counsel (listed in alphabetical order) to the  
155 Small / Regional / Rural LEC Steering Committee (“Small LEC Committee” and each a  
156 “Member”):

157 Gerard J. Duffy  
158 BLOOSTON, MORDKOF SKY, DICKENS, DUFFY & PRENDERGAST LLP  
159 2120 L Street, NW, Suite 300  
160 Washington, DC 20037  
161

162 Gregory R. Merz  
163 GRAY, PLANT, MOOTY, MOOTY & BENNETT, P.A.  
164 80 South 8th Street, Suite 500  
165 Minneapolis, MN 55402  
166

167 Brook B. Brown  
168 Carl R. Galant  
169 McGINNIS LOCHRIDGE & KILGORE LLP  
170 600 Congress Avenue, Suite 2100  
171 Austin, TX 78701  
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173 Todd A. Holleman  
174 MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.  
175 150 West Jefferson, Suite 2500  
176 Detroit, MI 48226

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177 James A.L. Buddenbaum  
178 Travis W. Montgomery  
179 PARR RICHEY OBREMSKEY FRANDSEN & PATTERSON LLP  
180 201 North Illinois Street, Suite 300  
181 Indianapolis, IN 46204

## **B. Responsibilities**

193           Each Steering Committee shall coordinate and manage the mutual positions or  
194           differences of opinions of the LECs with whom they are aligned. The Steering Committees shall  
195           work with Lead Counsel to coordinate the litigation efforts of Defendants. Subject to each  
196           Defendant's retention of the right to choose to act independently in its best interests in these  
197           proceedings and each Defendant's rights under Section IV.1 below, each Steering Committee  
198           shall have the following responsibilities, as these matters relate to the Defendants with whom  
199           each Committee is aligned ("Aligned Defendants"):

200 1. Identify areas of consensus or differences of opinion to inform Lead Counsel's  
201 activities, including through regular contact with counsel for the Aligned Defendants;

202           2.       Meet and confer as needed regarding the completion of Aligned Defendants'  
203       pretrial activities;

204           3.     Self-organize in any manner deemed appropriate by the Steering Committee,  
205     including, by way of example, appointment of a Chair, or delegation of lead responsibility for  
206     various tasks or issues;

207           4. Coordinate efforts with Lead Counsel to research and present matters to the Court  
208 and draft documents;

209           5. Designate counsel to participate in subcommittees as needed to address particular  
210 demands of the litigation;

211           6. Oversee the timely completion of discovery deadlines and the submission of  
212 discovery materials by the Aligned Defendants;

213           7. Consolidate discovery to eliminate repetition as much as possible;

214           8. Hold meetings and distribute periodic status reports;

215           9. Communicate on behalf of Aligned Defendants at pretrial proceedings and in  
216 response to any inquiries by the Court, subject to the right of any Aligned Defendant's counsel to  
217 present non-repetitive individual or different positions; and

218           10. Perform such other duties as may be incidental to the above duties or authorized  
219 by further order of the Court.

220 **III. DEFENDANTS' JOINT PRIVILEGES**

221           The Court recognizes the need for cooperation of Defendants and their counsel for the  
222 orderly and expeditious resolution of this litigation. Defendants' confidential communications in  
223 the course of their joint defense shall not, on that basis alone, be deemed to waive any privilege  
224 or protection, including without limitation the attorney-client privilege, the work-product  
225 doctrine, or any other privilege to which a party may otherwise be entitled. Any cooperative  
226 efforts by Defendants shall not in any way be used against any of them, be cited as purported  
227 evidence of wrongful action or wrongful conduct, or be communicated to any jury.

228 **IV. OBJECTIONS AND LIMITATIONS**

229       1. Any Defendant (“Objecting Defendant”) that objects to actions taken, or to  
230 impending actions about to be taken, by Lead Counsel or by either Steering Committee shall  
231 promptly notify Lead Counsel and the Steering Committee as appropriate. All Defendants shall  
232 use their best efforts to resolve these objections. In unusual circumstances and upon a showing  
233 of good cause, an Objecting Defendant may file a motion with the Court to set aside an action, or  
234 to enjoin a pending action, of Lead Counsel or a Steering Committee. However, no Objecting  
235 Defendant is relieved of complying with any order or deadline of this Court merely by having  
236 raised such an objection or filing such a motion. An Objecting Defendant must independently  
237 take whatever actions are necessary for it to comply with Court orders and deadlines.

238       2. Serving as Lead Counsel or as a Member of either Steering Committee shall not  
239 create any professional, ethical, fiduciary, or legal obligations with any Defendant other than its  
240 own clients. Neither Lead Counsel nor any Member of either Steering Committee shall be liable  
241 to any other person or party for any claim or cause of action of any kind, where such claim or  
242 cause of action arises from or relates to any action taken in good faith in the performance of their  
243 duties hereunder. No Defendant or attorney for any Defendant serving as Lead Counsel, Liaison  
244 Counsel, or serving on either Steering Committee shall receive compensation or reimbursement  
245 from any other Defendant for attorney’s fees expended in providing those services.

246       3. Any counsel may petition the Court to withdraw from their appointment(s) herein  
247 if they no longer represent any Defendants in this proceeding or upon a showing of good cause  
248 for other reasons.

249       ~~XXXXXX Any objections to this Order shall be filed within seven (7) days~~ [to be removed from  
final order in view of procedure permitting objections before entry of order]

250           **SO ORDERED.**

251  
252           [DATE]

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SIDNEY A. FITZWATER  
UNITED STATES DISTRICT JUDGE